BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
Order No. 2009-____

In Re:	Application of Time Warner Cable Information Services (South Carolina) LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation	(Docket No. 2008-325-C)
In Re:	Application of Time Warner Cable Information Services (South Carolina) LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Fort Mill Telephone Company, d/b/a Comporium Communications, and for Alternative Regulation	(Docket No. 2008-326-C)
In Re:	Application of Time Warner Cable Information Services (South Carolina) LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Home Telephone Company, Inc. and for Alternative Regulation	(Docket No. 2008-327-C)
In Re:	Application of Time Warner Cable Information Services (South Carolina) LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of PBT Telecom, Inc. and for Alternative Regulation	(Docket No. 2008-328-C)
In Re:	Application of Time Warner Cable Information Services (South Carolina) LLC, d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Rock Hill Telephone Company, d/b/a Comporium Communications, and for Alternative Regulation	(Docket No. 2008-329-C)

ORDER GRANTING AMENDMENT
TO CERTIFICATE

Prior to the passage of the Telecommunications Act of 1996 ("Telecom Act"), 47 U.S.C. Section 251 *et seq.*, telephone service was a regulated monopoly in which incumbent providers enjoyed protection from new companies entering the market. *Southwestern Bell Telephone Co. v. Apple*, 309 F.3d 713, 715 (10th Cir. 2002). The Telecom Act fundamentally restructured local telephone markets by providing that states could no longer enforce laws that impede competition and by providing that incumbent local exchange carriers are subject to a host of duties intended to facilitate market entry by Competitive Local Exchange Carriers ("CLECs"). *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 371, 119 S. Ct. 721, 142 L.Ed.2d 835 (1999). In recognition of this fundamental change the South Carolina General Assembly enacted legislation to encourage competition in the telecommunications, broadband, and cable television markets. The state Universal Service Fund was created and various types of "alternative regulation" were allowed. S.C. Code Ann. §§ 58-9-280, 58-9-575, 58-9-576, 58-9-577, & 58-9-585. The General Assembly also deregulated broadband service, "bundles" of telecommunications services, and contract services. S.C. Code Ann. §§ 58-9-285 & 58-9-280. The regulation of cable television was also streamlined to make it much easier for telecommunications companies to start providing cable services. S.C. Code Ann. § 58-12-300 through 58-12-400.

The General Assembly re-wrote the statutory requirements for becoming a certificated local exchange carrier in 1996. The new S.C. Act specifically indicated that the Public Service Commission of South Carolina ("Commission") could not act *inconsistent with the federal Telecom Act* while making its decision as to whether to grant a certificate of public convenience and necessity. S.C. Code § 58-9-280(B).

In light of these statutory mandates and the evidence presented in these cases, the Commission grants the Application of Time Warner Cable Information Services (South

Carolina), LLC, d/b/a Time Warner Cable, ("TWCIS" or "Company") to expand its scope of authority to serve customers in the geographic areas currently served by Farmers Telephone Cooperative, Inc. ("Farmers Telephone"); Fort Mill Telephone Company, d/b/a Comporium Communications, Inc. ("Ft. Mill Telephone"); Home Telephone Company, Inc. ("Home Telephone"); PBT Telecom, Inc. ("PBT"); and Rock Hill Telephone Co., d/b/a Comporium Communications ("Rock Hill Telephone") (collectively "ILECs").

PROCEDURAL BACKGROUND

This matter comes before the Commission on the Applications of TWCIS to expand its scope of authority to provide competitive local exchange services in the service areas of Farmers Telephone, Ft. Mill Telephone, Home Telephone, PBT, and Rock Hill Telephone.

Pursuant to Order No. 2004-213, TWCIS is currently authorized to offer interexchange services to customers throughout the State and local telecommunications services to customers in certain areas of South Carolina where the incumbent local exchange telephone company currently does not have a rural exemption under 47 U.S.C. § 251(f)(1). Order No. 2005-385(A) amended TWCIS' authority to allow the Company to serve customers throughout the service area of Alltel South Carolina, Inc., now known as Windstream South Carolina, LLC ("Alltel"). In Docket No. 2003-362-C, Order No. 2004-495, TWCIS was authorized to operate under an alternative regulatory plan under S.C. Code Sections 58-9-575 and 58-9-585 and seeks to operate under the same regulatory scheme in the ILECs' service areas.

TWCIS applied to provide the same services in the ILECs' service areas that are provided in the Company's current service area. TWCIS currently provides facilities-based Internet Protocol ("IP") intrastate telecommunications and voice service to residential and commercial customers. TWCIS provides intrastate telecommunications services to both wholesale and retail

commercial customers. These services, which generally are comprised of non-voice transmission services, provide high-capacity, point-to-point, point-to-multipoint and multipoint-to-multipoint dedicated connections between one or more customer locations and/or TWCIS. The services may utilize Ethernet interfaces, optical fiber and/or coaxial cable facilities and are designed and provisioned on an individual case basis pursuant to contracts with customers. These services are currently offered by TWCIS in the areas in which it is certificated pursuant to its South Carolina Tariff No. 1 on file with the Commission.

TWCIS notes that the general information on TWCIS' financial, technical and managerial ability filed in the prior certification applications in 2003 and 2004 remains materially unchanged. TWCIS notes that in Order No. 2004-213 and Order No. 2005-385(A) the Commission concluded that the TWCIS is financially qualified, and that TWCIS possesses the managerial and technical resources to provide telecommunications services. TWCIS seeks the same waivers as it was granted in Order No. 2004-213 and 2005-385(A).

Pursuant to the instructions of the Commission's Docketing Department, TWCIS published the notices of its filings of the Applications in area newspapers. Each ILEC intervened in the docket pertaining to its individual service area.

TWCIS filed motions for confidential treatment of Exhibit 3, TWCIS 2007 Telecommunications Company Annual Report, in each docket to which each ILEC objected. TWCIS' amended its motions in its reply to limit its request for confidential treatment of Schedule 7 of the Annual Report. The Commission granted the amended motion for confidential treatment and appointed B. Randall Dong as the hearing officer for all dockets in Order Nos. 2008-718, 2008-719, 2008-720, 2008-721, and 2008-722.

Each of the ILECs and St. Stephen Telephone Co., Inc. ("St. Stephen") filed motions to

consolidate Docket Nos. 2008-325-C, 2008-326-C, 2008-327-C, 2008-328-C, 2008-329-C, and 2008-330-C for hearing.[1] The dockets were consolidated for hearing by Commission Hearing Officer Directive dated December 11, 2008.

The consolidated hearing in these matters was held January 6 and 7, 2009. TWCIS was represented by C. Bradley Hutto of Williams and Williams and Frank R. Ellerbe, III, and Bonnie D. Shealy of Robinson, McFadden & Moore, P.C. TWCIS presented the testimony of Charlene Keys, Frank Knapp, Warren Fischer, August Ankum, and Julie Laine. The ILECs were represented by M. John Bowen, Jr. and Margaret Fox of the McNair Law Firm, P.A., and Thomas J. Navin who was granted *pro hac vice* admission by the Commission at the beginning of the hearing. The ILECs presented the testimony of Douglas Meredith and Emmanuel Staurulakis. The Office of Regulatory Staff ("ORS") was represented by Nanette S. Edwards and Jeffrey M. Nelson. ORS presented the testimony of Christopher Rozycki.

SUMMARY OF TESTIMONY

Charlene Keys

TWCIS presented the direct testimony of Charlene Keys, Vice President and General Manager of Time Warner Cable's Columbia and Hilton Head markets. Ms. Keys is responsible for the business operations, construction, technical operations, quality assurance and service delivery for Time Warner Cable's Voice, Video and Data lines of business.[2]

Ms. Keys submitted evidence describing the company's South Carolina operations and its proposal to expand services to include the ILECs' service areas. Ms Keys explained how TWCIS

[1] TWCIS withdrew its application for authority to provide local services in the service area of St. Stephen, Docket No. 2008-330-C, so the St. Stephen motion was moot.
[2] (Tr. Vol. 1, p. 22, 30, 39, 48, 58, 67, 77, 86, 96, 104, 110-111).

service differs from Internet phone providers like Vonage who use the public Internet to transport calls. Digital Phone service is provided over the same Time Warner Cable system facilities used to provide video and high-speed data services. "Internet protocol" describes the technology used to digitize information.[3]

Ms. Keys testified that Sprint Communications Corporation ("Sprint") assists TWCIS in providing Digital Phone service by routing voice traffic to and from destinations outside of the Time Warner Cable network using the public switched telephone network. Sprint also assists TWCIS in delivering E911 service, porting telephone numbers, and delivering long distance traffic.[4]

Ms. Keys discussed the importance of being able to bundle Digital Phone service with Time Warner Cable's cable television and high-speed data services in order to be competitive with the ILECs who are currently offering from three to six products in a bundle.[5] She explained that the inability to provide voice services to Time Warner Cable's current customers in the ILECs' services areas puts the Company at a competitive disadvantage in those areas.[6]

In 2007 the Company launched its Business Class Telephone that is geared toward small to mid-size businesses. Time Warner Cable has been offering high-speed data and video services for over ten years to businesses. The Business Class Telephone provides another option which can be bundled.[7] Ms. Keys also explained how bundling benefits customers by allowing them to use features that operate across two or more of their services or cross-platform features such as caller ID on the television. She described other cross-platform features which are currently being

[3] (Tr. Vol. 1, p. 23-24, 31-32, 40-41, 49-50, 59-60, 68-69, 78-79, 87-88, 97-98, 105-106, 112-114).
[4] (Tr. Vol. 1, p. 24, 32, 41, 50, 60, 69, 79, 88, 98, 106, 113).
[5] (Tr. Vol. 1, p. 25-26, 33-34, 42-43, 51-52, 61-62,70-71, 80-81, 89-90, 99-100, 107-108).
[6] (Tr. Vol. 1, p. 25-27, 33-35, 42-44, 51-53,61-63, 70-72, 80-82, 89-91, 99-101, 107-109, 115-116).
[7] (Tr. Vol. 1, p. 115).

developed such as Photo-Show TV and remote DVR features.[8]

Ms. Keys also described the procedures that TWCIS currently uses to ensure that it does not offer its Digital Phone service in the service area of any of the ILECs. The Company has a computer system in place which will allow customer service representatives to connect subscribers only where the Company is certificated. She testified that the rate center for a non-certificated service area is not activated. There is also a further safeguard in place which causes the provisioning system to reject Digital Phone orders for non-certificated areas.[9]

Frank Knapp, Jr.

TWCIS presented the direct testimony of Frank Knapp, Jr., President and Chief Executive Officer of the South Carolina Small Business Chamber of Commerce ("Small Business Chamber"). The Small Business Chamber represents the interests of small businesses at all levels of government including regulatory agencies. Mr. Knapp testified that his organization supports the TWCIS application because both rural and urban small businesses should be allowed to benefit from telephone company competition.[10] Mr. Knapp testified that he had previously testified before the Commission in the Universal Service Fund ("USF"), Docket No. 1997-239-C. The Small Business Chamber was concerned that the state USF plan would do great economic harm to small businesses by increasing costs without allowing small businesses to financially benefit from increased telephone competition. He also testified about the ILECs' voluntary elections to be alternatively regulated and the Small Business Chamber's involvement in telephone issues before the General Assembly.[11] Mr. Knapp explained that competition gives

[8] (Tr. Vol. 1, p. 26, 34, 43, 52, 62, 71, 81, 90, 100, 108, 116-117, 131).
[9] (Tr. Vol. 1, p. 121, 126-127, 141-142).
[10] (Tr. Vol. 1, p. 148-149, 154-155, 160-161, 166-167, 172-173, 176-177).
[11] (Tr. Vol. 1, p. 149-150, 155-156, 161-162, 167-168, 173-174, 177-179, 186-188).

small businesses more choices and acts as a check on prices.[12]

Warren R. Fischer

TWCIS then presented the direct testimony of Warren R. Fischer, Chief Financial Officer for QSI Consulting, Inc.[13] Mr. Fischer presented evidence that Time Warner Cable's entry into the market of the ILECs would not adversely affect the availability of affordable basic local exchange rates.[14] He testified that the ILECs' ability to raise basic local exchange rates is restricted since all are alternatively regulated under S.C. Code Ann. Section 58-9-576.[15]

Mr. Fischer also presented evidence on whether each of the ILECs has sufficient financial strength to withstand competitive entry by TWCIS.[16] He analyzed financial information for each ILEC over the period from 2003 through 2007.[17] Mr. Fischer analyzed the following measures of financial strength for each ILEC: (1) retained earnings, (2) working capital, (3) debt to equity ratio, (4) access lines growth, and (5) receipts from the universal service funds. He concluded that each company was financially strong enough to withstand competition from TWCIS.[18]

Mr. Fischer responded to questions involving a rate of return analysis although none of the ILECS are rate-of return regulated.[19] His testimony indicated that the ILECs have been successful in leveraging their telecommunications infrastructure to offer services, whether regulated or non-regulated, that allowed them to earn significant returns.[20]

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[12] (Tr. Vol. 1, p. 151, 157, 163, 169, 175).
[13] (Tr. Vol. 1, p. 190).
[14] (Tr. Vol. 1, p. 196-197, 213-214, 230-231, 246-247, 268-269, 286-287, 305-306, 319)
[15] (Tr. Vol. 1, p. 197-200, 214-217, 231-234, 247-250, 269-272, 287-290, 306-310, 319-320).
[16] (Tr. Vol. 1, p. 319-320).
[17] (Tr. Vol. 1, p. 203-204, 221-222, 237-238, 254, 276-277, 294, 313-314) & (Hearing Exhibits 6-12).
[18] (Tr. Vol. 1, p. 201-206, 218-224, 234-241, 250-258, 272-280, 290-298, 310-317, 320-324) & (Hearing Exhibits 6-12).
[19] (Tr. Vol. 1, 327-328).
[20] (Tr. Vol. 1, p. 352).

August H. Ankum

TWCIS presented the direct and rebuttal testimony of August H. Ankum, Senior Vice President at QSI Consulting, Inc.[21] Mr. Ankum presented evidence that the provision of TWCIS' services (1) will not adversely impact the availability of affordable local exchange service, (2) does not otherwise adversely impact the public interest, and (3) is consistent with the promotion of universal service.[22] Mr. Ankum also testified about the effect of alternative regulation of the ILECs in regard to whether TWCIS will adversely impact the availability of affordable local exchange service. Because the companies voluntarily chose to be alternatively regulated, they cannot raise their basic local rates above the inflation-adjusted statewide average. Therefore, TWCIS market entry cannot adversely impact the affordability of those basic services.[23]

Mr. Ankum's testimony addressed whether the ILECs are well positioned to face competition entry and the effect on keeping basic service affordable.[24] He also testified that the presence of TWCIS in the marketplace will advance universal service objectives by increasing the availability of quality service offerings at affordable rates.[25]

Mr. Ankum responded to ILEC Witness Meredith's claims that in some instances competition is not in the public interest.[26] He also responded to ILEC Witnesses' Oliver and Meredith's contention that TWCIS will only be serving low cost customers. TWCIS will be serving customers where it has existing cable facilities regardless of whether the customers are high cost or low cost customers, and the ILECs failed to show that those cable facilities are

[21] (Tr. Vol. 1, p. 358).
[22] (Tr. Vol. 1, p. 366, 398, 430, 462, 494, 521-522).
[23] (Tr. Vol. 1, p. 369-371, 401-403, 433-435, 465-467, 497-499, 524-525).
[24] (Tr. Vol. 1, p. 380, 412, 444, 476, 509, 525-527).
[25] (Tr. Vol. 1, p. 381-387, 413-420, 445-452, 476-483, 510-516, 527-528, 589-591).
[26] (Tr. Vol. 1, p. 533-534).

located only in low cost areas.[27] Mr. Ankum addressed the concerns about phantom traffic and explained that the issue of phantom traffic and other intercarrier compensation issues are currently being addressed by the FCC in its *Intercarrier Compensation Notice of Proposed Rulemaking*[28] and are simply "red herrings." (Tr. Vol. 1, p. 544-545).

Witness Ankum also testified as to several reasons why the Commission should not adopt the ILECs' proposed conditions.[29] Mr. Ankum noted that the ILECs have prepared for competition by offering bundles of services and are actively engaged in competition via their CLEC affiliates.[30]

Julie P. Laine

TWCIS presented the direct and rebuttal testimony of Julie P. Laine, Group Vice President, Regulatory for Time Warner Cable by videoconference.[31] Ms. Laine is responsible for the legal and regulatory matters relating to Time Warner Cable's voice, video and data services.[32] Ms. Laine presented evidence on the financial, technical, and managerial abilities of TWCIS to provide local services in ILECs' service areas in South Carolina. She also described the services that TWCIS proposes to offer in ILECs' area.[33]

Ms. Laine testified that the issuance of an amended certificate to TWCIS would be in the public interest in that competition will be further increased in South Carolina. Competition serves the public interest by bringing about lower rates, improved quality of service, and

[27] (Tr. Vol. 1, p. 535-537).
[28] *See* Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *High-Cost Universal Service Support*, WC Docket No. 05-337 (and related proceedings), FCC No. 08-262 (rel. Nov. 5, 2008) ("*Further Notice*") and the draft orders attached as the *Appendix A and C Draft Orders*.
[29] (Tr. Vol. 1, p. 545-547).
[30] (Tr. Vol. 1, p. 568-569).
[31] (Tr. Vol. 2, p. 604-605).
[32] (Tr. Vol. 2, p. 607, 617, 627, 637, 647).
[33] (Tr. Vol. 2, p. 608-610, 618-620, 628-630, 638-640, 648-650).

enhanced services. Amending the certificate will increase competition in the South Carolina market using a new technology. Voice over IP technology can link phone calls with other data which makes new services possible. In addition, TWCIS has made a significant investment in South Carolina and provides employment opportunities for South Carolina residents.[34]

Ms. Laine testified that granting the application would not adversely impact the availability of affordable local exchange service since the ILECs are effectively held harmless against lines being lost to competitors by the federal USF support they receive. In addition, the ILECs can seek additional funding from the state USF. TWCIS currently contributes to both the state and the federal universal service funds based on its interconnected VoIP revenues and revenues derived from the sale of high capacity transmission / telecommunications services in South Carolina.[35]

Ms. Laine also testified that TWCIS pays access charges, intercarrier compensation, reciprocal compensation, all other regulatory fees and taxes. In addition to paying access charges, TWCIS collects access charges where the company has direct interconnection agreements with incumbent local carriers. TWCIS currently has a contractual relationship with Sprint in order to provide voice services in South Carolina.[36] The contract with Sprint provides for the payment of the appropriate access charges based on the originating and terminating telephone numbers as required.[37] Ms. Laine noted that TWCIS has always paid full intercarrier compensation based on actual jurisdiction since entering the market in South Carolina and in more than 20 other states over the last four-plus years. She testified that there has been no allegation that the Company has ever been involved with what the ILECs termed to be "phantom

[34] (Tr. Vol. 2, p. 611, 621, 631, 641, 651).
[35] (Tr. Vol. 2, p. 611-613, 621-623, 631-633, 641-643, 651-653).
[36] (Hearing Exhibit 17).
[37] (Tr. Vol. 2, p. 613, 623, 633, 643, 651, 676-677).

traffic."[38]

Ms. Laine responded to the ILECs' request that the Commission impose conditions on the expansion of TWCIS' certificate by noting that TWCIS is seeking certification to provide Digital Phone Service under the same set of regulations applicable to other CLECs in South Carolina and that TWCIS complies with the applicable rules and regulations in those areas where is it already certificated.[39] She also specifically addressed their proposed conditions on an individual basis such as the suggestion that the certification order require TWCIS to use only Sprint as their intermediary carrier and other proposed interconnection requirements.[40] She testified that the establishment of a point of interconnection ("POI") within the ILEC's territory is an issue that arises during the interconnection negotiations. It is resolved through negotiation or arbitration. Ms. Laine notes that Sprint has already successfully negotiated interconnection agreements with Farmers Telephone, Ft. Mill Telephone, Home Telephone, and PBT, all of whom were represented by Mr. Meredith's company. She also testified that issues regarding the proper identification of traffic are addressed in interconnection agreements.[41] Ms. Laine also addressed Witness Meredith's suggestion that TWCIS not be allowed to submit tariff filings in the future for additional services, particularly wholesale services.[42]

Ms. Laine addressed Witness Oliver's request that TWCIS be required to make payments to the South Carolina USF based on the "full voice" portion of its service offerings. She testified that TWCIS currently pays into the South Carolina USF in accordance with the Commission's

[38] (Tr. Vol. 2, p. 676-677).
[39] (Tr. Vol. 2, p. 659-660, 668-669).
[40] (Tr. Vol. 2, p. 660-665, 669-673).
[41] (Tr. Vol. 2, p. 665-666, 673-674).
[42] (Tr. Vol. 2, p. 664-665, 673-675).

rules and will continue to do so.[43]

Ms. Laine indicated that it was incorrect for the ILECs to say that TWCIS was attempting to secure customers in low-cost high density areas. Ms. Laine explained that the boundaries of Time Warner Cable's service territory historically come from their franchise boundaries established by franchising authorities. Those boundaries do not match up precisely to historic telephone rate centers or wire centers since the two industries grew up differently. The result is that there may be some homes in some of the ILECs' service areas that Time Warner Cable does not serve and some homes in Time Warner Cable's territory that the ILECs may not serve because the boundaries are simply different. TWCIS serves 100% of the service territory created by the franchising authority's framework.[44]

Douglas Meredith

The ILECs presented the direct and surrebuttal testimony of Douglas Meredith, the Director-Economics and Policy of John Staurulakis, Inc.[45] Mr. Meredith's testimony recommended that the Commission either impose certain conditions on the expanded TWCIS' certificate or deny the application.[46] Mr. Meredith's proposed conditions included the following: (1) require TWCIS to comply with all applicable State rules and regulations, (2) require TWCIS to continue to use Sprint as an intermediary carrier for Digital Phone VoIP Service. As a result TWCIS would be prohibited from seeking numbering resources directly from NANPA and interconnecting directly with the ILECs. (3) The Commission should require TWCIS and Sprint to abide by the *Time Warner Declaratory Ruling.* [47](4) The amended certification allows TWCIS

[43] (Tr. Vol. 2, p. 666-667, 675, 687-688).
[44] (Tr. Vol. 2, p. 707-709).
[45] (Tr. Vol. 2, p. 722).
[46] (Tr. Vol. 2, p. 728-729, 759-760, 790-791, 899-900, 930-931).
[47] *Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain*

to provide its high capacity point to point private line service only on a common carrier basis. (5) The only wholesale service that TWCIS is allowed to provide is high capacity point to point private line service. (6) TWCIS is required to file the same reports and comply with the same service quality standards applicable to incumbent local exchange carriers. (7) TWCIS' unaffiliated non-VoIP wholesale provider must establish a POI within the ILECs' service area or if the POI is outside the ILECs' service area, to bear the financial burden of transporting calls from the ILEC boundary to the POI.[48] Mr. Meredith testified that no other states have imposed the particular certification conditions the ILECs are requesting in this proceeding.[49]

Keith Oliver

The ILECs presented the direct and surrebuttal testimony of H. Keith Oliver, Senior Vice-President of Corporate Operations of Home Telephone Co., Inc.[50] Mr. Oliver suggested that the Commission should treat TWCIS differently than other CLEC applicants and suggested that the Commission can and should use the application to consider the broader issue of regulation of the broadband network provider versus the services provided over the network.[51]

Mr. Oliver also proposed imposing additional conditions before granting the application for expanded certification. He would require TWCIS to continue to use Sprint or a similar unaffiliated non-VoIP CLEC for its wholesale interconnection services provider. He also suggested imposing the same regulatory requirements as those imposed on the ILECs and requiring TWCIS to make television programming available to the ILECs on a "most favored

Interconnection Under Section 251 of the Communications Act of 1934, as Amended to Provide Wholesale Telecommunications Services to VoIP Providers, Memorandum Opinion and Order, FCC WC Docket No. 06-55 (March 1, 2007) ("*Time Warner Declaratory Ruling*").

[48] (Tr. Vol. 2, p. 740-741, 771-772, 802-803, 911-912, 942-943).

[49] (Tr. Vol. 2, p. 1031-1033).

[50] (Tr. Vol. 2, p. 1048).

[51] (Tr. Vol. 2, p. 1052-1054, 1086-1089, 1020-1022, 1054-1056, 1188-1190).

nation" basis.[52] Mr. Oliver testified that TWCIS should be required to contribute to the state Universal Service Fund based on total voice revenues. When the Company bundles voice services, Oliver suggests that revenues should be pro-rated subject to the state USF in the same manner as the ILECs.[53] He also testified about the ILECs concerns regarding identification of the types and jurisdiction of traffic (otherwise known as "phantom traffic").[54]

Christopher J. Rozycki

ORS presented the testimony of Christopher J. Rozycki, Program Manager in ORS's Telecommunications Department.[55] Mr. Rozycki testified that he evaluated the application and found that the previously approved certificate of public convenience and necessity demonstrated that the Company possesses the technical, financial and managerial resources to provide the services requested throughout the entire State of South Carolina. He noted that TWCIS is currently meeting the Commission's service standards and contributing to the state USF. Mr. Rozycki testified that ORS recommends that the Commission approve TWCIS' request to amend its certificate.[56] ORS Witness Rozycki indicated that his conclusion is based in part on ORS's experience with TWCIS' operations in South Carolina.[57]

Mr. Rozycki determined that approval of the application would not adversely impact the availability of affordable local exchange services. He testified that the ILECs voluntarily chose to be alternatively regulated which limits the allowed rate increases for basic local service. The ILECs also have the support of the federal and state USFs from which they all obtain support. Competitive alternatives such as wireless and VoIP Vonage-type services help keep prices in line

[52] (Tr. Vol. 2, p. 1074, 1078-1079, 1108, 1112-1113, 1142, 1146-1147, 1176, 1180-1181, 1210, 1214-1215, 1235).
[53] (Tr. Vol. 2, p. 1077, 1111, 1145, 1179, 1212).
[54] (Tr. Vol. 2, p. 1076-1077, 1110-1111, 1144-1145, 1178-1179, 1212-1213).
[55] (Tr. Vol. 2, p. 1276-1277).
[56] (Tr. Vol. 2, p. 1283, 1294, 1305, 1316, 1326-1327, 1337-1338, 1348-1349, 1359-1360, 1371, 1382, 1391-1393).
[57] (Tr. Vol. 2, p. 1396).

with the "market." He also outlined several methods which could be used by the ILECs to resolve revenue shortfalls.[58] Rozycki testified that competition serves the public interest by forcing companies to offer better service, more advanced services, and additional options to their customers.[59] Competition also forces companies to improve their efficiencies by reducing costs and lowering expenses.[60] Some of the ILECs have upgraded their networks to offer cable television and high speed broadband services in anticipation of competition.[61]

Mr. Rozycki also testified that approval of the TWCIS applications would not adversely impact the public interest. He indicated that providing consumers with the option to purchase Digital Phone Service meets the public interest by providing consumers with a wired alternative for local telephone service and by offering them a different pricing scheme.[62] Rozycki reviewed the financial impact on the ILECs of the TWCIS applications and concluded that the ILECs are sound companies who have been adding to their overall equity and providing dividends to their shareholders.[63]

Mr. Rozycki disagreed with the ILECs' contention that a list of conditions should be imposed on TWCIS' amended certificate. He testified that the Commission's rules and regulations and South Carolina law in regard to CLECs are adequate and fairly strong. ORS does not recommend imposing conditions. No other CLECs have certification conditions on their operations and some of the ILECs' proposed conditions are outside of the Commission's

[58] (Tr. Vol. 2, p. 1286-1287, 1297-1298, 1308-1309,1319-1320, 1329-1330, 1340-1341, 1351-1352, 1362-1363, 1374-1375,1385-1386, 1394, 1397-1398) & (Hearing Exhibit 19).
[59] (Tr. Vol. 2, p. 1397-1398).
[60] (Tr. Vol. 2, p. 1400).
[61] (Tr. Vol. 2, p. 1400-1401).
[62] (Tr. Vol. 2, p. 1287-1288, 1298-1299, 1309-1310, 1320-1321, 1331-1332, 1342-1343, 1353-1354, 1364-1365, 1375-1376, 1386-1387).
[63] (Tr. Vol. 2, p. 1401-1402).

jurisdiction.[64] ORS compiled the following alternative list: (1) As long as TWCIS' VoIP is not designated as a "telecommunications service" by the FCC, then TWCIS shall interconnect with the 5 ILECs using the services of a certified telecommunications carrier as prescribed in the FCC's Order in WC docket No. 06-55; (2) TWICs shall comply with all of the rules governing CLECs in South Carolina, with the exception of the waivers granted in Order No. 2004-213; (3) TWCIS shall contribute to the state universal service fund, and it shall comply with all current state rules governing the universal service fund; and and (4) TWCIS shall not transmit any improperly identified traffic to any of the ILECs.[65] Rozycki indicated that there are plenty of laws and rules governing CLECs and that the list does nothing more than restate the law already in place.[66]

Rozycki also reviewed how well TWCIS was doing in terms of market share in the areas where the Company is already certificated such as AT&T and Hargray. ORS examined how many homes Time Warner Cable's network currently passes in the service areas of the ILECs, AT&T and Hargray Telephone Co., Inc. He noted that in the last four years TWCIS is not "blowing the doors off" of the incumbents. Rozycki does not believe there is any concern that TWCIS will suddenly take a large percentage of the ILECs' customer base.[67]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After carefully considering the evidence, including the testimony and exhibits presented in this docket, the Commission makes the following findings of fact and concludes, as a matter of law, the following:

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[64] (Tr. Vol. 2, p. 1407-1408).
[65] (Tr. Vol. 2, p. 1409-1410) & (Hearing Exhibit 20).
[66] (Tr. Vol. 2, p. 1414).
[67] (Tr. Vol. 2, p. 1416 -1417 & 1419) & (Hearing Exhibit 21).

1. TWCIS submitted applications to amend its Certificate of Public Convenience and Necessity to serve customers throughout the ILECs' service areas in South Carolina. The Commission has jurisdictions over these applications pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2007).

2. The Commission finds that TWCIS is currently authorized to offer interexchange services to customers throughout the State of South Carolina and local exchange services to customers in areas of South Carolina where the incumbent local exchange telephone company does not have a rural exemption under 47 U.S.C. § 251(f)(1) and in the service area of Alltel.

3. The ILECs are all alternatively regulated under S.C. Code Ann. Section 58-9-576. TWCIS has been operating pursuant to an alternative regulatory plan under S.C. Code §§ 58-9-575 and 58-9-585 approved in Orders Nos. 2004-495 and 205-385(A) since the Company was initially certificated. We conclude that it is reasonable to allow TWCIS to continue to operate under the same alternative regulatory plan in the expanded service areas.

Financial, Managerial and Technical Resources

4. We find that TWCIS has substantially the same financial, managerial, and technical resources as presented during its initial certification hearing in Docket No. 2003-362-C and its hearing to amend its certificate to provide service in the service area of Alltel, Docket No. 2004-279-C. TWCIS Witnesses Keys and Laine provided evidence of the Company's financial, managerial, and technical resources. Ms. Keys is responsible for the business operations, construction, technical operations, quality assurance and service delivery for the Time Warner Cable's Voice, Video and Data lines of business. She also provided evidence related specifically to the current South Carolina operations. Time Warner Cable has 1400 employees and 25 work locations in South Carolina. Voice services are currently provided in the service areas of

Verizon, AT&T, Windstream, Hargray Telephone, Bluffton Telephone, and Horry Telephone Cooperative.[68] Ms. Laine also provided evidence of the financial, technical, and managerial abilities of TWCIS to provide local service in the ILECs' service areas.[69] ORS Witness Rozycki also evaluated the application and found that the Company possessed the technical, financial, and managerial resources to provide the services requested. Rozycki testified that TWCIS has provided telecommunications service in the state without any major incidents or outages. ORS recommended approval of TWCIS' request to amend its certification which was based in part on ORS's experience with TWCIS' current operations in South Carolina.[70] As evidenced by the testimony and the documents filed with this Commission, we conclude that TWCIS possesses sufficient technical and managerial expertise and financial resources sufficient to expand its operations in South Carolina as required by S.C. Code Ann. Section 58-9-280(B)(1) (Supp. 2007).

Service Standards

5. The Commission further finds that based on the technical and managerial expertise of its officers and employees, as evidenced by the testimony and documents in the record in this case, that TWCIS has the capability to provide services in the ILECs' service areas that will meet the service standards of the Commission. S.C. Code Ann. § 58-9-280(B)(2) (Supp. 2007). ORS Witness Rozycki testified that TWCIS has been offering service in South Carolina for over four years. He indicated that the Company meets the Commission's service standards and reports its quality of service metrics to ORS as required by the Commission.[71] The

[68] (Tr. Vol. 1, p. 23-24, 31-32, 40-41, 49-50, 59-60, 68-69, 78-79, 87-88, 97-98, 105-106, 112-114).
[69] (Tr. Vol. 2, p. 608-610, 618-620, 628-630, 638-640, 648-650).
[70] (Tr. Vol. 2, p. 1283-1284, 1294-1295, 1305-1306, 1316-1317, 1326-1328, 1337-1339, 1348-1350, 1359-1361, 1371-1372, 1382-1383, 1391-1393, & 1396).
[71] (Tr. Vol. 2, p. 1285, 1295, 1306, 1317, 1328-1329, 1339, 1350, 1361, 1373, 1383, 1392-1393).

Commission concludes that TWCIS will provide service in the ILECs' service areas that will meet the service standards of the Commission.

Availability of Affordable Local Exchange Service

6. The Commission finds that TWCIS' "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. § 58-9-280(B)(3) (Supp. 2007). TWCIS contends that this provision must be construed in a way that is consistent with the provisions of the 47 U.S.C.A. Section 253 which prohibits the State from enforcing provisions that would prevent TWCIS from offering the services it seeks to offer. We agree. The S.C. certification statute specifically provides that the Commission could not act "inconsistent with the federal Telecommunications Act of 1996." S.C. Code Ann. § 58-9-280(B). TWCIS provided evidence that affordable local exchange service will be protected if it is allowed to offer services in the ILECs' service areas for several reasons.

A. ILECs' Alternative Regulatory Status

First, the ILECs have elected to be alternatively regulated under S.C. Code Section 58-9-576 (Supp. 2007). A carrier that elects alternative regulation under this section is subject to the following conditions on the rates it can charge:

> (3) The rates for flat-rated local exchange services for residential and single-line business customers on the date of election shall be the maximum rates that the LEC may charge for these local exchange services for a period of two years from the date the election is filed with the commission. During this period, the local exchange company may charge less than the authorized maximum rates for these services. For those small LEC's whose prices are below the statewide average local service rate, weighted by number of access lines, the commission shall waive the requirements of this paragraph until the time as the flat-rated local exchange service rate for residential customers equals the statewide average local residential service rate, weighted by the number of access lines, and the flat-rated local exchange service rate for single-line business customers equals two times the statewide average local residential service rate.

(4) For those companies to which item (3) applies, after the expiration of the period set forth above, the rates for flat-rate local exchange residential and single-line business service provided by a LEC may be adjusted on an annual basis pursuant to an inflation-based index.

(5) The LEC's shall set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers. All of these rates are subject to a complaint process for abuse of market position.

S.C. Code § 58-9-576(B)(3)–(5) (Supp. 2007).

TWCIS Witnesses Ankum and Fischer testified about the effect of the alternative regulation election on the ability of the ILECs to increase basic local exchange rates. Mr. Ankum discussed why the ILECs' election of alternative regulation regime is important in the TWCIS application. The ILECs are no longer regulated by a rate of return and by making the election the ILECs can no longer come to the Commission and ask for a rate increase. The ILECs can charge what they want to for most of their services, but they are limited by statute in what they can charge for flat-rated local exchange services for residential and single-line business customers. This means that TWCIS' market entry cannot adversely impact the affordability of those flat-rated local exchange services.[72]

Mr. Fischer testified that the two year cap on rates has expired for all of the ILECs with the exception of Farmers Telephone. The rates of these companies can now be adjusted annually based on the inflation-based index. Farmers Telephone's rates are capped until March 16, 2010. Therefore, we agree with these witnesses' conclusion that any decision by the ILECs to increase their rates will be independent of TWCIS' entry and limited to an inflation-based index.[73]

[72] (Tr. Vol. 1, p. 370-371, 402-403, 434-435, 466-467, 498-499).
[73] (Tr. Vol. 1, p. 196-200, 213-217, 230-234, 246-250, 268-272, 286-290, 305-310, 319-320, 369-371, 401-403, 433-435, 465-467, 497-499, 524-525).

B. ILECs' Financial Ability to Face Competitive Entry

Second, we find that the ILECs have the financial capability to survive in spite of competitive entry. TWCIS Witnesses Fischer and Ankum and ORS Witness Rozycki testified about the ILECs' ability to face competitive entry. Mr. Fischer analyzed the 2003 through 2007 Annual Reports of the ILECs and presented evidence of their financial strength to withstand competition from TWCIS. Mr. Fischer concluded that each company was financially strong enough to withstand competition from TWCIS.[74]

Mr. Fischer testified that Farmers Telephone had almost $104 million in retained earnings at the end of 2007. The company had a working capital ratio of over 3.5 and a debt-to-equity ratio of less than one indicating they're not very leveraged as a company. In the last two years, Farmers Telephone paid over $7 million in capital credits to its members. Farmers Telephone has increased revenue by 12% despite losing 11% of its access lines. Farmers Telephone generated healthy net income each year with an extraordinary earnings of $30.4 million in 2006 alone. The company's State USF support increased 80% and Federal USF support increased 36%.[75]

Mr. Fischer then testified that Ft. Mill Telephone paid over $15 million in dividends over the last five years. At the end of 2007, Ft. Mill Telephone still has almost $51 million in retained earnings and a working capital ratio of 1.3 and a zero debt-to-equity ratio since the company has no long-term debt. Over the last five years, Ft. Mill Telephone increased both annual revenue and access lines by 20%. Retained earnings increased over 41%. Ft. Mill Telephone averaged $4

[74] (Tr. Vol. 1, p. 201-206, 218-224, 234-241, 250-258, 272-280, 290-298, 310-317, 320-324) & (Hearing Exhibits 6-12).
[75] (Tr. Vol. 1, p. 201-206 & 321-322) & (Hearing Exhibit 6).

million in net income in four of five years and in 2006 alone earned $16 million in net income.[76]

Mr. Fischer testified that Home Telephone paid a significant amount of dividends over the last five years. Annual revenues increased by almost $24 million per year while access lines declined by one percent. Home Telephone averaged almost $6.8 million per year net income. The company earned net profit over sales between 22 and 42% during the time. Home Telephone's State USF support increased 126% and Federal USF support increased 12%.[77]

Fisher testified that PBT paid a significant amount of dividends over the last five years. During the same period, PBT earned net income in the range of $2-$5 million per year. The company earned net profit over sales between 11 and 27% during the time. State USF support increased 117% and Federal USF support increased 36%.[78]

Fisher testified that Rock Hill Telephone paid over $55 million in dividends while retaining about $165 million of earnings. Rock Hill Telephone paid shareholders $6 million in dividends per year. Revenues remained stable over the last five years at $40 million a year and retained earnings increased by 33%. Net income increased 678% to almost $30 million at the end of 2007.[79]

Ft. Mill Telephone and Rock Hill Telephone are jointly owned by the Comporium Group. Over the last five years these two companies paid $70 million in dividends with approximately $216 million in retained earnings.[80] Fischer concluded that each of the financial metrics show that each company is able to withstand competitive entry.[81]

Mr. Bowen's cross-examination of Mr. Fischer involved a rate of return analysis although

[76] (Tr. Vol. 1, p. 218-224 & 322-323) & (Hearing Exhibit 7).
[77] (Tr. Vol. 1, p. 234-241, 250-258, & 323) & (Hearing Exhibits 8 & 9).
[78] (Tr. Vol. 1, p. 272-280, 290-298, & 323-324) & (Hearing Exhibits 10 & 11).
[79] (Tr. Vol. 1, p. 310-317 & 324) & (Hearing Exhibit 12).
[80] (Tr. Vol. 348-350).
[81] (Tr. Vol. 1, p. 324).

none of the ILECS are rate-of return regulated.[82] Mr. Fischer testified that the ILECs have been successful in leveraging their telecommunications infrastructure to offer services, whether regulated or non-regulated, allowing them to earn significant returns.[83] Mr. Fischer indicated that the classification of regulated versus non-regulated is many times the result of strictly accounting-separations issues and not necessarily a true reflection of how the regulated operations by itself is performing. It's simply the way the company has chosen to report those results based on any number of allocations.[84] ORS Witness Rozycki also concluded that the return on equity is a more appropriate way of examining the ILECs' businesses than a review of their return on capital since the companies are alternatively regulated.[85]

Mr. Fischer testified that TWCIS asked for additional financial information during discovery, but the ILECs refused to provide the requested data on the grounds that it was irrelevant.[86] Mr. Ankum testified that the ILECs' witnesses did not assert in their testimony that the threat of competition would drive them out of business. The ILEC testimony included no numbers or facts supporting the proposition that competition from TWCIS might threaten their financial viability.[87] We note that the ILECs produced no witnesses or other evidence that competition from TWCIS would have a negative impact on their companies' finances so as to threaten affordable service.[88]

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[82] (Tr. Vol. 1, 327-328).
[83] (Tr. Vol. 1, p. 352).
[84] (Tr. Vol. 1, p. 356-357).
[85] (Tr. Vol. 2, p. 1401-1402).
[86] (Tr. Vol. 1, p. 332).
[87] (Tr. Vol. 1, p. 591-592).
[88] Under South Carolina law the general rule in civil cases is that when a party fails to produce the testimony of an available material witness within the party's control, it may be inferred that the testimony of such witness, if presented, would be adverse to the party who failed to call the witness. *Baker v. Port City Steel Erectors, Inc.*, 261 S.C. 469, 200 S.E.2d 681, 683 (1973); *Duckworth v. 1st National Bank*, 254 S.C. 563, 176 S.E.2d 297, 304 (1970); *Wisconsin Motor Corp. v. Green*, 224 S.C. 460, 79 S.E.2d 718, 720 (1954); *McCowan v. Southerland*, and 253 S.C. 9, 168 S.E.2d 573, 574 (1969).

To the contrary ILEC Witness Oliver testified that the ILECs themselves engage in competition through their CLEC affiliates. Mr. Oliver's company has a CLEC affiliate, Home Telecom, which operates in BellSouth's service area as does PBT. Home Telecom is regulated as a CLEC and Home Telephone is regulated as an ILEC. Witness Oliver also indicated that when Home Telecom decides to expand its service offerings, it makes that determination on business considerations. Home Telecom and PBT's CLEC affiliates do not have COLR obligations.[89] Mr. Ankum noted that the ILECs have prepared for competition by offering bundles of services that include wireless and home security services in addition to the triple-play of video, voice and data. The ILECS are also actively engaged in competition through their CLEC affiliates.[90]

After reviewing the ILECs' product offerings and rates, TWCIS Witness Ankum also concluded that the ILECs are well positioned to face competitive entry. The ILECs offer a more diversified portfolio of products than TWCIS which allows them to retain the high-revenue customers. The ILECs should be successful in customer retention because of their local presence, their efforts to customize services to local demand, and their name recognition. According to Mr. Ankum, TWCIS' entry will provide the desired price discipline to the ILECs' product offerings, but will not cause a significant loss in the ILECs' customer counts and revenues, preserving the revenue base and keeping the basic service affordable.[91]

ORS Witness Rozycki also reviewed the financial impact on the ILECs of the TWCIS applications. He looked at the ILECs' revenues, trends of revenues, earnings, and return on equity. Rozycki concluded that the ILECs are sound companies who have been adding to their

[89] (Tr. Vol. 2, p. 1249-1255).
[90] (Tr. Vol. 1, p. 568-569).
[91] (Tr. Vol. 1, p. 380, 412, 444, 476, 509, 525-527).

overall equity and providing dividends to their shareholders.[92]

C. USF Support

Third, the ILECs draw subsidy funds from the State and Federal USFs. TWCIS Witnesses Laine, Fischer, and Ankum testified that the ILECs are currently receiving both universal service funds. Ms. Laine indicated that the ILECs are effectively held harmless against lines being lost to competitors by the federal USF. TWCIS Witnesses Laine and Ankum described the federal USF support mechanisms that could help offset any decrease in revenues to the ILECs caused by the loss of subscriber lines. The amount of per-line support from the federal fund increases as the number of lines served declines.[93]

Mr. Ankum testified that the federal high cost universal service fund calculates costs and subsidies based on the overall network maintained as part of the company being a carrier of last resort ("COLR"). This means that as the ILEC loses customers to competitors such as TWCIS, it continues to receive support for network facilities that are no longer being used to provide service to particular customers. These federal subsidies insulate the ILEC against any adverse impacts associated with competitive entry. He then described several federal universal support mechanisms that could help to offset an ILEC's decreased revenue caused by the loss of subscriber lines. He presented evidence of state and federal USF disbursements for each of the ILECs and the proportion of total revenues represented by USF disbursements for each.[94]

Mr. Fischer compared the amount of both federal and state USF support received by each company and calculated the percentage of total operating revenue each company received from

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[92] (Tr. Vol. 2, p. 1401-1402).
[93] (Vol. 2, p. 611-613, 621-623, 631-633, 641-643, 651-653) and *See Federal-State Board on Universal Service*, 14th Report and Order, 22nd Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11294 ¶ 125 (2001) ("If the incumbent's lines decreased while its fixed costs remained roughly the same, its per-line costs would increase. Consequently, the incumbent would be entitled to higher support per line.")..
[94] (Tr. Vol. 1, p. 381-387, 413-420, 445-452, 476-483, 510-516, 527-528, 589-591).

USF. If an ILEC loses additional lines and revenue due to market share loss to TWCIS, it will receive more USF support than it does today. He concluded that USF support is a significant portion of the ILECs' revenue streams and that USF support will continue to provide a safety net to the ILECs in the face of competition.[95]

We agree with ORS Witness Rozycki who testified that TWCIS presented compelling support for its claim that the availability of Digital Phone Service will not cause the ILECs to raise rates to unaffordable levels. The alternative regulatory option voluntarily chosen by the ILECs caps rates and limits rate increases for basic local service to no more than the annual change in the inflation-based index. In addition, the ILECs have the support of the federal and state USF. All of the ILECs are currently receiving support from both funds. Competitive alternatives such as wireless, Vonage-type services, and TWCIS' proposed service will help to keep prices for local service in line with the market and thus, affordable.[96]

We conclude that the availability of the USF support, the ILECs' voluntary elections to be alternatively regulated, and their financial strength, precludes us from finding that competition from TWCIS would have an adverse impact on the availability of affordable local exchange services.

Universally Available Telephone Service

7. The Commission finds based on the testimony and documents in the record in this case that TWCIS "will participate in the support of universally available telephone service at affordable rates." S.C. Code Ann. § 58-9-280(B)(4). ORS Witness Rozycki testified that TWCIS currently participates in the support of universally available telephone service at affordable rates

[95] (Tr. Vol. 1, p. 204-206, 222-224, 239-241, 256-258, 278-280, 296-298, 315-317).
[96] (Tr. Vol. 2, p. 1297, 1286, 1308, 1319, 1329-1330, 1340-1341, 1351-1352, 1362-1363, 1374, 1385) & (Hearing Exhibit 19).

through its contributions to the South Carolina USF.[97] TWCIS Witness Laine testified that in 2007 TWCIS contributed $279,918 to the South Carolina USF and $1,358,615 to the federal USF.[98] TWCIS Witness Ankum explained that the presence of TWCIS will advance universal service objectives by increasing the availability of quality service offerings at affordable rates. TWCIS will also offer advanced services consistent with universal service objectives. We agree with Mr. Ankum's conclusion that TWCIS' entry into the ILECs' markets is consistent with the core market-opening provisions of the 1996 Telecom Act.[99] In addition, we conclude that the Company has demonstrated its support of universally available telephone service at affordable rates by contributing to the state and federal USF.

Public Interest Impact

8. The Commission finds that the provision of local exchange service by TWCIS will "not otherwise adversely impact the public interest." S.C. Code § 58-9-280(B)(5) (Supp. 2007). The approval of TWCIS' application will serve the public interest by enhancing competition in the State of South Carolina. The goals of both the state and federal telecommunications acts were to embrace and increase competition. The Telecom Act prohibited states from enforcing laws that impede competition and by provided that incumbent carriers are subject to a host of duties intended to facilitate market entry by CLECs. 47 U.S.C.A. § 253 & *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 371, 119 S. Ct. 721, 142 L.Ed.2d 835 (1999). The South Carolina General Assembly has also enacted legislation to encourage competition in the telecommunications, broadband, and cable television markets via the state USF and alternative regulation statutes. S.C. Code Ann. §§ 58-9-280, 58-9-575, 58-9-576, 58-9-577 & 58-

[97] (Tr. Vol. 2, p. 1283, 1287, 1294, 1298, 1305, 1309, 1316, 1320, 1327, 1331, 1338, 1342, 1349, 1353, 1360, 1364, 1371, 1375, 1382, 1386).
[98] (Tr. Vol. 2, p. 613, 623, 633, 643, 653).
[99] (Tr. Vol. 1, p. 381, 413, 445, 477, 510-511).

9-585. Broadband service, "bundles" of telecommunications services, and contract service were deregulated. S.C. Code Ann. §§ 58-9-285 & 58-9-280. Cable television regulation was also streamlined to make it much easier for telecommunications companies to start providing cable services. S.C. Code Ann. § 58-12-300 through 58-12-400. Several of the ILECs and their affiliates have already taken advantage of this new statutory method to obtain a cable or video franchise to provide cable or video services inside and outside their service areas.

TWCIS Witness Keys discussed the importance of being able to bundle Digital Phone service with Time Warner Cable's cable television and high-speed data services in order to be competitive with the ILECs who are currently offering from three to six products in a bundle.[100] Farmers Telephone and its affiliate FTC Diversified Services currently offer bundles of local, long distance and DSL services. Both Farmers Telephone and FTC Diversified have state-issued certificates of franchise authority to provide video services.[101] Ft. Mill Telephone, Rock Hill Telephone, and Home Telephone currently offer bundles of local, long distance, wireless, cable television, high speed Internet and security services.[102] PBT offers bundles of local, long distance, wireless, video services, high speed Internet and security services.[103] She explained that the inability to provide voice services to Time Warner Cable's current customers in the ILECs' services areas puts the Company at a competitive disadvantage in those areas. She presented evidence of the increasing number of Time Warner Cable's customers who subscribe to two or more of their cable, video or high speed data services as a bundled service offering. At the end of 2007, 48% of Time Warner Cable's customers subscribed to two or more of their primary

[100] (Tr. Vol. 1, p. 25-26, 33-34, 42-43, 51-52, 61-62,70-71, 80-81, 89-90, 99-100, 107-108).
[101] (Tr. Vol. 1, p. 62-63, 71-72) & (Hearing Exhibits 3 & 4).
[102] (Tr. Vol. 1, p. 43-44, 52-53, 81-82, 90-91, 100-101, 108-109) & (Hearing Exhibits 2, 4, & 5).
[103] (Tr. Vol. 1, p. 34-35) & (Hearing Exhibit 1).

services.[104]

Several other witnesses testified about the benefits of competition and how it serves the public interest. TWCIS Witness Laine testified that competition serves the public interest by bringing about lower rates, improved quality of service and enhanced services. Amending the certificate will increase competition in the ILECs' market using a new technology. Since the proposed service relies on existing cable television facilities to reach customers, it represents one of the best hopes for viable competition in the residential telephone market. In most cases, this will be the first time the customers in the ILECs service areas have the opportunity to chose a facilities-based competitive local telephone service. Voice over IP technology can link phone calls with other data which makes several new services possible. The public interest is also served by TWCIS' significant investment in South Carolina and by the Company's providing employment opportunities for South Carolina residents.[105]

Mr. Knapp of the South Carolina Small Business Chamber of Commerce testified that his organization supports the application because small businesses in both rural and urban areas should be allowed to benefit from telephone company competition.[106] Mr. Knapp testified that competition gives small businesses more choices and acts as a check on prices. When more than one provider is competing to offer services, market forces generally drive prices down. He believes that competition increases the probability that costs will decrease. He compared the situation to obtaining cellular phone service noting that if you do not like the price charged or the service package or the way a complaint is handled by a cellular carrier, you can choose to leave

[104] (Tr. Vol. 1, p. 25-27, 33-35, 42-44, 51-53,61-63, 70-72, 80-82, 89-91, 99-101, 107-109, 115-116).
[105] (Tr. Vol. 2, p. 611, 621, 631, 641, 651).
[106] (Tr. Vol. 1, p. 148-149, 154-155, 160-161, 166-167, 172-173, 176-177).

that company and select a new cellular provider from a number of different alternatives.[107]

TWCIS Witness Ankum also testified that bringing consumer choice to rural South Carolina is in the public interest. Even if the ILEC loses customers or reduces rates to keep customers, that is not harmful to consumers or the public interest. Mr. Ankum explained that in a market with multiple providers, customer churn is an indication that customers are exercising their ability to change providers and reaping the benefits of competition. They may be getting lower bills, enjoying new or better features, or receiving better customer services. If rates decrease as a result of competition between carriers, the lower prices benefit consumers, local communities, and their economies at large as a more efficient telecommunications environment emerges.[108]

Mr. Ankum responded to ILEC Witness Meredith's claims that in some instances competition is not in the public interest. Meredith cited Sections 214 and 251(f)(1) of the Telecom Act as examples of instances that Congress has determined that competition is not in the public interest. Section 214 addresses the procedures for determining whether to provide universal service subsidies to competitive carriers in rural areas. Section 251(f)(1) concerns rural carriers' exemption from certain interconnection and unbundling obligations.[109] Mr. Ankum noted that 47 U.S.C. § 253 expressly preempted barriers to entry and that the two sections cited by Meredith are outside the scope of the case. Mr. Meredith's admits that these statutory protections have not been asserted in this proceeding, but argued that these provisions show that unqualified promotion of competition in rural areas should not be used to make judgments

[107] (Tr. Vol. 1, p. 151, 157, 163, 169, 175).
[108] (Tr. Vol. 1, p. 388-389, 421-422, 453-454, 484-485, 517-518).
[109] (Tr. Vol. 1, p. 533-534).

involving the public interest.[110] Mr. Ankum testified that the Telecom Act of 1996 is intended to promote competition and Section 253(a) speaks to the extent to which states are generally discouraged from prohibiting competition.[111] Mr. Ankum notes that all incumbents have carrier-of-last-resort ("COLR") obligations. If competitive entry were denied on that basis, there would have been no competitive entry. The universal service fund was established because incumbent carriers have COLR obligations.[112] Mr. Ankum also discussed the fact that the universal service funds allow incumbents to lower their price and get an increase in subsidy which is a tool in the marketplace that competitive carriers do not have.[113]

ORS Witness Rozycki also testified that competition serves the public interest by forcing companies to offer better service, more advanced services, and additional options to their customers.[114] Competition forces companies to improve their efficiencies by reducing costs and lowering expenses.[115] He indicated that providing consumers with the option to purchase Digital Phone Service meets the public interest by providing consumers with a wired alternative for local telephone service and by offering them a different pricing scheme.[116]

The Commission concludes that the expansion of TWCIS' service area is in the best interests of the citizens of the State of South Carolina. The goals of both the state and federal telecommunications acts were to embrace and increase competition. From the testimony at the hearing, we conclude that the provision of the proposed service positively impacts the public interest. Therefore, we hold that the public interest is enhanced, not adversely impacted, by the

[110] (Tr. Vol. 2, p. 738, 768, 799, 908, 939).
[111] (Tr. Vol. 1, p. 553).
[112] (Tr. Vol. 1, p. 556-557).
[113] (Tr. Vol. 1, p. 595-596).
[114] (Tr. Vol. 2, p. 1397-1398).
[115] (Tr. Vol. 2, p. 1400).
[116] (Tr. Vol. 2, p. 1287-1288, 1298-1299, 1309-1310, 1320-1321, 1331-1332, 1342-1343, 1353-1354, 1364-1365, 1375-1376, 1386-1387).

expansion of TWCIS' certificate.

Proposed Conditions

9. The Commission finds that it would be discriminatory to impose the special certification conditions requested by the ILECs upon TWCIS. No other CLEC in South Carolina has been subject to similar conditions in order to be certificated in South Carolina. In fact, ILEC Witness Meredith testified that no other states have imposed certification conditions such as those proposed by the ILECs in this proceeding.[117] The ILECs have not alleged or provided any evidence that TWCIS is not currently operating in compliance with the regulations and laws of the State of South Carolina. In fact, the evidence in the record is to the contrary.

TWCIS Witness Laine testified that the Company is currently operating in South Carolina in compliance with CLEC rules and regulations in areas served by other ILECs including three rural carriers. The Company seeks to expand the geographical reach of its operations to offer service to the ILECs' service areas in exactly the same way that TWCIS is presently offering service in South Carolina.[118] ORS recommended approval of the amended certificate based in part on ORS's experience with TWCIS' operations in South Carolina. ORS Witness Rozycki testified that TWCIS is currently meeting the Commission's service standards and contributing to the state USF.[119]

Ms. Laine also testified that TWCIS pays access charges, intercarrier compensation, reciprocal compensation, South Carolina USF charges and federal USF charges. According to Ms. Laine TWCIS has always paid full intercarrier compensation based on actual jurisdiction

[117] (Tr. Vol. 2, p. 1031-1033).
[118] (Tr. Vol. 2, p. 659-660).
[119] (Tr. Vol. 2, p. 1283, 1294, 1305, 1316, 1326,-1327, 1337-1338, 1348-1349, 1359-1360, 1371, 1382, 1391-1393).

since entering the market in South Carolina.[120] Ms. Laine noted that TWCIS complies with the state's regulations and policies applicable to CLECs and there have been no allegations to the contrary.[121]

Ms. Laine specifically responded to the ILECs' proposed conditions. In regard to the ILECs' condition that TWCIS should file the same reports and comply with the same service quality standards as the incumbents, Ms. Laine noted that TWCIS requested authority to operate as a competitive carrier and there is no basis in law or public policy to subject TWCIS to rules applicable to incumbent carriers.[122] The ILECs suggested that TWCIS should be required to continue to use Sprint as an intermediary carrier for Digital Phone service. Ms. Laine explained that TWCIS must have the flexibility to react to changing business conditions including the ability to choose its own vendors and suppliers and the ability to change those suppliers when it deems it is necessary to do so. Ms. Laine noted that if TWCIS changes its interconnection provider, it will have to choose a company that either has or can obtain a similar agreement. Although TWCIS doesn't currently have plans to obtain interconnection from an affiliated company, Ms. Laine testified that there was no legal restriction preventing TWCIS from obtaining interconnection services from an affiliate. The FCC recently addressed the issue in *Bright House Networks, LLC v. Verizon California, Inc.* Memorandum Opinion and Order, FCC 08-159 (June 23, 2008) ("Retention Marketing Order"), which the U.S. Court of Appeals for the D.C. Circuit unanimously upheld. *Verizon Caifornia, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. Feb. 10, 2009). As part of the FCC's determinations regarding Verizon's retention marketing practices, the FCC held that the affiliated wholesale providers used by Comcast and Bright

[120] (Tr. Vol. 2, p. 613, 623, 633, 643, 651, 676-677).
[121] (Tr. Vol. 2, p. 668-669).
[122] (Tr. Vol. 2, p. 659-660, 668-669).

House are telecommunications carriers under 47 U.S.C. § 222(b) and thus able to obtain interconnection from incumbent carriers under 47 U.S.C. § 251 and 47 CFR 51.100. *Retention Marketing Order* at ¶¶ 37-41.[123]

ILEC Witness Meredith asked the Commission to require TWCIS' unaffiliated wholesale provider to establish a POI within the ILEC's territory. We agree with Ms. Laine who testified that it is inappropriate to impose an obligation on an entity that is not even a party to the certification proceeding. The establishment of the appropriate POI is an issue that arises during the interconnection negotiations. It is resolved through negotiation or arbitration. Ms. Laine notes that Sprint has already successfully negotiated interconnection agreements with Farmers Telephone, Ft. Mill Telephone, Home Telephone, and PBT, all of whom were represented by Mr. Meredith's company. She also testified that issues regarding the proper identification of traffic are addressed in interconnection agreements.[124]

Mr. Meredith proposed that TWCIS should not be allowed to ask the Commission to tariff new services as conditions change or as the marketplace changes in the future without reapplying for additional certification authority.[125] Ms. Laine also addressed this suggestion and noted that TWCIS should not be subject to restrictions not applied to other CLECs. If the ILECs object to a future tariff filing, they can object at the time the tariff offering is submitted to the Commission. It would be unprecedented to require TWCIS to ask for a new certificate or new authority every time it wants to add a service offering.[126] Mr. Meredith testified that he believed other CLEC certification applications were not as limited as TWCIS' application, but admitted that he did not check other applications. He also was not aware that ILECs and CLECs have the

[123] (Tr. Vol. 2, p. 660-665, 669-673).
[124] (Tr. Vol. 2, p. 665-666, 673-674).
[125] (Tr. Vol. 979-980).
[126] (Tr. Vol. 2, p. 664-665, 673-675).

ability to ask the Commission to approve new services by filing additional tariffs. He indicated that TWCIS wanted the flexibility to offer additional services and concluded that "type of uncertainty is not healthy and shouldn't be countenanced by the Commission.[127] Mr. Meredith admitted that no other states have imposed the particular certification conditions the ILECs are requesting in this proceeding.[128]

We find this proposed tariff condition to be unnecessary and contrary to the Commission's well established procedures regarding tariff filings. All CLECs seeking certification in this state are required by statute to include a price list and informational tariff regarding the types of local exchange and exchange access services to be provided. S.C. Code Ann. § 58-9-280(B). All CLECs and ILECs in South Carolina are allowed to amend and revise their tariffs. Revised tariffs are routinely filed electronically using the Commission's DMS ETariff System (http://etariff.psc.sc.gov). If the ILECs object to a particular tariff filing, they can request that the tariff filing be investigated. If an investigation is instituted on a particular tariff filing, notice of the investigation is provided to the Company and the tariff filing is suspended pending further Order of the Commission. We find that this standard procedure is reasonable and has proven adequate to address any concerns the ILECs may have in regard to a particular service offering. In addition, the Commission granted TWCIS request for alternative regulatory treatment pursuant to S.C. Code Sections 58-9-575 and 58-9-585 in Order No. 2004-495. Under the approved regulatory treatment, the Commission does not fix or prescribe the rates, tolls, charges, or rate structures for TWCIS' bundled interexchange and local services or for its operator and directory assistance services. Imposition of the proposed tariff condition would be

[127] (Tr. Vol. 979-982).
[128] (Tr. Vol. 2, p. 1031-1033).

unprecedented and conflict with the alternative regulatory treatment granted to TWCIS in Order No. 2004-495.

TWCIS Witness Ankum also disagreed with the ILECs witnesses' proposal that the Commission imposed additional requirements on TWCIS. He noted that regulations reflect the Companies' status as incumbent carriers and serve to protect the ratepayers in the absence of competition. TWCIS will face vigorous competition from the ILECs which will force TWCIS to price its services reasonably and affordably.[129] Mr. Ankum noted that the ILECs are ahead of the curve in bundling services. They are offering wireless and home security services in addition to the triple-play of video, voice and data. The ILECs have established their own CLECs and are actively engaged in competition.[130]

ORS recommended approval of the amended certificate, but does not recommend imposing the ILECs' list of conditions. ORS Witness Rozycki indicated that the Commission's regulations and South Carolina law in regard to CLECs are adequate. He also testified that no other CLEC has any substantive conditions imposed on its certification and that some of the ILECs' conditions are outside of the Commission's jurisdiction.[131] Although ORS prepared an alternative list of conditions, Mr. Rozycki testified that he did not think the ORS alternative conditions were needed and that the list only restated the law already in place.[132] We are persuaded by Ms. Laine's response to the ILECs' various proposed conditions and agree with Mr. Rozycki that no special conditions should be imposed on TWCIS' amended certificate.

Waivers

10. The Company requested a continued waiver of the Commission's regulatory

[129] (Tr. Vol. 1, p. 545-547).
[130] (Tr. Vol. 1, p. 568-569).
[131] (Tr. Vol 2, p. 1407-1408).
[132] (Tr. Vol. 2, p. 1414).

requirements granted in Order Nos. 2004-213 and 2005-385(A). Specifically in these Orders the Commission waived the requirements of 26 S.C. Regs. 103-610, 103-631, and an exemption from any record-keeping rules or regulations that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts. The Commission finds TWCIS' requested waivers reasonable and understands the potential difficulty presented to TWCIS should the waivers not be granted. We conclude that a continued waiver of the Commission's regulatory requirements granted in Order Nos. 2004-213 and 2005-385 should be granted.

11. The Commission concludes that TWCIS' certificate of public convenience and necessity should be amended to allow TWCIS to provide local exchange services in the service areas of Farmers Telephone, Ft. Mill Telephone, Home Telephone, PBT, and Rock Hill Telephone.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT

A. The Application of TWCIS for an amendment to its Certificate to expand into the service areas of Farmers Telephone, Ft. Mill Telephone, Home Telephone, PBT, and Rock Hill Telephone is hereby approved;

B. All reporting requirements and other directives found in Order Nos. 2004-213, 2005-385(A) and 2004-495 shall remain in full force and effect, unless exceptions are noted above, including, but not limited to those allowing various waivers. TWCIS shall, in addition, file copies of all reports outlined in Order No. 2004-213 with the Office of Regulatory Staff, in addition to filing them with the Commission.

C. TWCIS may continue to operate under the alternative regulatory plan approved in Order No. 2004-495.

D. This order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

_____
Elizabeth E. Fleming, Chairman

ATTEST:

_____
John E. Howard, Vice-Chairman